COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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| Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts | D.T.E. 01-20<br><br>Part A (UNE Rates) |

**AT&T'S OPPOSITION TO VERIZON'S MOTION FOR RECONSIDERATION AND CLARIFICATION**

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## Introduction.

Verizon's motion for reconsideration addresses seven issues concerning unbundled switching rates, makes several arguments regarding the unbundling of interoffice transport costs from DCS costs, and raises one issue on collocation power, two on non-recurring charges, and one each on OSS and DUF charges. None of Verizon's arguments have any merit. AT&T addresses these issues in the same order in which they appear in the Department's decision, and respectfully urges the Department to deny Verizon's motion.

With respect to almost every issue, Verizon merely regurgitates the very arguments that the Department already has analyzed and expressly rejected in its Inputs Order, D.T.E. 01-20. As Verizon acknowledges, a motion for reconsideration should not "simply reargu[e] issues considered and decided."[1] That, however, is exactly what Verizon does. Verizon does not point to any material and substantial mistake in the Department's prior analysis or identify any previously undisclosed facts, and thus does not meet its burden of demonstrating that the Department should reverse its Inputs Order on any of the issues reargued by Verizon.

Where Verizon states that it is instead seeking clarification, its motion is still without foundation. Verizon concedes that "[m]otions for clarification do not provide parties with the opportunity to relitigate the record," and that their purpose is only "to remove ambiguity or uncertainty arising out of the Department's decision on a material issue in the case."[2] But the points that Verizon asks the Department to revisit are not in the least ambiguous or uncertain. The Department was clear in its Inputs Order, and Verizon's request for clarification is nothing more than an attempt to reargue the record and seek a change in the Department's Order.

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1 Verizon Motion for Reconsideration, at 3 (citing Phase 4-M Order at 5, citing *Commonwealth Electric Company*, D.P.U. 92-3C-1A, at 3-6 (1995); *Boston Edison Company*, D.P.U. 90-270-A, at 3 (1991)).

2 Verizon Motion for Reconsideration, at 4.

## Argument.

### I. SWITCHING.

### A. Switch Material Prices: The Department Should Reject Verizon's Attempt to Reargue the New Switch/Growth Part Mix.

The Department ordered Verizon to base its switch material pricing on "a blend of 90 percent new switches and ten percent growth switches."[3] Verizon challenges this finding on reconsideration, but its argument does nothing more than reiterate the same testimony and arguments that the Department already has considered and properly rejected.

Verizon begins by reiterating its assertion that current switch pricing is predicated on a limited number of new switches being sold with the remaining switching equipment sold as growth parts, and that the instantaneous replacement of many switches would necessarily increase the vendors' price.[4] The Department already has specifically and correctly rejected this argument. The Department explained that Verizon's argument was not supported by evidence (and that the Bridgestone/Firestone recall invoked by Verizon was not on point), and that it was wrong as a matter of theory (as demonstrated by the fact that Verizon's own cost study uses existing new part pricing in all areas other than switching).[5] Indeed, the Department found that "if Verizon were to order several hundred new switches simultaneously, the cost per switch could result in lower per-switch prices" than the 90/10 new/growth melding ordered by the Department.[6]

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[3] *D.T.E. 01-20*, at 302.
[4] Verizon Motion for Reconsideration, at 25-26.
[5] *D.T.E. 01-20*, at 307.
[6] *D.T.E. 01-20*, at 307.

Verizon also claims that "no record evidence supports a reversal of the Department's previous ruling" in the 1996 *Consolidated Arbitrations* proceeding with respect to this issue.[7] This is untrue. The Department discussed in some detail the substantial evidence, and related analysis of the governing TELRIC standard, upon which its ruling was based.[8] Indeed, the Department's 90/10 ruling is consistent with the testimony of Verizon's own switching witness. Ms. Matt testified, on two different hearing days, that under TELRIC the proper way to determine the mix of new switches and growth parts would be to begin by modeling all new switches, and then at the end of the planning period augment the switch capacity with growth parts.[9] Indeed, Verizon's witness emphasized her agreement with the AT&T/WorldCom witness on this point.[10] The Department followed just such an analysis in reaching its well-supported conclusion that Verizon must base its switching costs on a 90/10 mix of outlays for new switches and switching growth parts.[11]

The Department expressly considered and rejected Verizon's alternative analysis,[12] and it is not proper on reconsideration for Verizon merely to restate its old arguments for that alternative.[13] Verizon says that the Department acted improperly by finding that Verizon's alternative analysis was flawed, and that instead the Department "should have directed Verizon … to submit supplemental information and analysis."[14] This is a bizarre claim. Verizon had the burden of proof, but failed to meet it through the extensive testimony and briefing on this

7 Verizon Motion for Reconsideration, at 27.
8 *D.T.E. 01-20*, at 298-303.
9 Tr. 8, at 1627-1628, 1/24/02 (Matt); Tr. 12, at 2357-2358, 1/31/02 (Matt).
10 Tr. 12, at 2358, 1/31/02 (Matt) ("I think that's what Ms. Pitts was suggesting, also, to you. So I think we're in agreement there.").
11 *D.T.E. 01-20*, at 301-302.
12 *D.T.E. 01-20*, at 301.
13 *See* Verizon Motion for Reconsideration, at 28-29.
14 Verizon Motion for Reconsideration, at 29.

subject.  Verizon is not entitled to a second bite at this apple after all hearings have been completed and the Department has issued its ruling.

### **B. "Getting Started" Costs and EPHC Costs Are Correctly Allocated to Non-Traffic Sensitive UNEs, and Verizon Is Merely Repeating Arguments Already Considered and Rejected by the Department.**

The Department found that "contrary to Verizon's assertion, usage is not truly the cost driver for getting started and EPHC investments," and therefore the Department ordered Verizon to assign those costs "to non-traffic sensitive UNEs."[15]  Verizon's request for reconsideration of this decision simply repeats assertions the Department already has analyzed and rejected.

Verizon claims that the Department "mistakenly did not directly consider" Verizon testimony in deciding that getting-started and EPHC costs do not vary with usage.[16] Contrary to Verizon's claim, the Department specifically considered and rejected this assertion, stating:

> We are not persuaded by Verizon's argument that the reason that usage does not cause the need for additional getting started investment results from the evolution of the switch.  Switches may well have evolved specifically to accommodate capacity with sufficient processor capacity for the anticipated usage, but in a forward-looking cost study, contrary to Verizon's assertion, usage is not truly the cost driver for getting started and EPHC investments.[17]

Verizon's has not identified any mistake in the Department's analysis, and its assertion that the Department ignored Verizon's evidence is false.

Verizon argues in the alternative that this "is a policy issue that rests within the discretion of the state commission establishing UNE rates," and urges the Department to reverse its prior conclusion on the ground that allocation of getting-started costs to non-traffic sensitive rates will "unfairly shift[] the burden of shared costs recovery to low volume (residential) customers…."[18]

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15 *D.T.E. 01-20*, at 310-311.

16 Verizon Motion for Reconsideration, at 22-23.

17 *D.T.E. 01-20*, at 310; *see also id.* at 267-269, summarizing the argument by Verizon that is restated in Verizon's motion for reconsideration.

18 Verizon Motion for Reconsideration, at 24.

The Department already considered and rejected this argument, expressly finding that "Verizon's concern that low-volume users will … subsidize high-volume users is unpersuasive; and it is certainly of far less concern than that under Verizon's proposal, wherein all users would subsidize Verizon for the entire period of time that the rates are in effect beyond three years."[19] Verizon alleges no mistake or inadvertence on the part of the Department in regard to this subsidization claim, nor can it. In any case, by Verizon's own reckoning, the Department had the discretion to rule the way that it did on this issue.

### C. Feature Port Additive Costs Were Properly Rejected, and Verizon's Restatement of Prior Argument Provides No Ground for Reconsideration.

The Department properly rejected Verizon's proposed charges for feature port additives.[20] Verizon does not like this result, but its sole response is to reargue the same points that the Department already has expressly considered and rejected in its Inputs Order. Specifically, Verizon asks the Department to establish rates based on the opinions of Verizon's product managers – opinions which Verizon failed to support.

Verizon contends that it "obviously" incurs costs for feature port additives,[21] and asserts that the Department therefore "mistakenly and inadvertently ignored record evidence in disallowing all feature port additive costs…."[22] The Department, however, made no mistake and did not inadvertently "ignore record evidence" in rejecting Verizon's feature port additive costs. To the contrary, the Department specifically ordered Verizon to substantiate its proposed inputs in granting AT&T's motion to compel, and Verizon failed to do so. As a result, the Department appropriately found that Verizon failed to meet its burden of proof. As the Department explained:

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19 *D.T.E. 01-20*, at 311.
20 *D.T.E. 01-20*, at 316.
21 Verizon Motion for Reconsideration, at 18.

> Verizon, in choosing input values, could have but apparently did not, rely on an analysis of data on penetration and usage of features…Verizon apparently did not seek to gather pertinent data such as on the quantity of lines in its offices that subscribe to optional features, nor is there any further explanation of the product managers' estimates of the values that they recommended be used as inputs to SCIS/IN.[23]

Verizon's claim that a study of feature port additive costs would cost more to perform than the costs themselves does not justify Verizon's failure to gather and present *any* data to support its experts' opinions.

In support if its motion for reconsideration, Verizon argues that "reasonable" expert opinion inputs for each of Verizon's proposed costs constitutes adequate basis for Department acceptance of those costs.[24] Verizon, however, never provided any evidence to demonstrate whether these opinions are reasonable, what documentation the experts relied upon to form these opinions, what surveys the experts performed, in what sample size, or pursuant to what instruction forms. Rather, in response to the Department's order to provide " a step by step delineation of the process product manages used to derive [each] estimate,"[25] Verizon stated only that:

> At a meeting between the cost analyst and the product manager:
> 1. Each SCIS/IN feature input was discussed.
> 2. The product manager estimated each input value.
> 3. The cost analyst recorded each value as input into SCIS/IN.[26]

Verizon's failure to provide any support for these product management "estimations" which form the foundation for each feature port additive cost, including the four which Verizon cites in its motion, warranted Department rejection of Verizon's proposed costs. No matter how many

(continued...)

22 Verizon Motion for Reconsideration, at 21.

23 *D.T.E. 01-20*, at 316.

24 Verizon Motion for Reconsideration, at 18.

25 *D.T.E. 01-20*, "Interlocutory Order on AT&T's … Motions to Compel," at 26 (October 18, 2001).

26 Ex. ATT-VZ 4-1, Supplemental Response.

additional inputs may be combined with these unsubstantiated expert opinions, Verizon computes its total feature port additive costs in each case based on a non-verifiable input attributed to unexplained expert opinion.[27] The Department considered and properly rejected the unsupported opinions relied upon by Verizon, and Verizon has offered no new evidence to validate those opinions.

### D. EF&I Factor: Verizon's Repeated Arguments on Switch Installation Costs Are Still Without Merit.

Verizon's argument in favor of Department reconsideration of the adopted 29 percent switch EF&I factor is based on a false premise. That is, Verizon claims that the Department computed the EF&I factor as a fraction in which 1998 total switch investment costs are the denominator and 1998 total EF&I costs are the numerator.[28] Based on this incorrect assumption, Verizon then claims that the Department "mistakenly failed to take into account the fact that its reduction of switch investment costs…should have commensurately reduced the value of the denominator in the EF&I fraction and accordingly increased the value fraction as a whole."[29] Thus, Verizon assumes that the Department made a finding that there is a fixed total installation cost (the numerator in the ratio discussed by Verizon). But these assumptions are incorrect, and mischaracterize the Department's order. To the contrary, the Department expressly found that Verizon had failed to prove the total amount of switching installation costs that occur in a forward-looking network, and instead relied upon the best available evidence to set the EF&I factor directly.[30]

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27 *See* Ex. VZ-39, Verizon Recurring Cost Study, Part C-1, Section 9, Page 1 of 1, line 1; Section 10, Page 1 of 1, line 2; Section 16, Page 2 of 2, line 1; Section 17, Page 2 of 2, line 1; Section 18, Page 2 of 2, line 1; Section 24, Page 2 of 2, line 1; Section 29, Page 1 of 1, line 1; Section 30, Page 1 of 1, line 2; Section 34, Page 2 of 2, lines 1 and 4.

28 Verizon Motion for Reconsideration, at 5.

29 Verizon Motion, for Reconsideration, at 5-6.

30 *D.T.E. 01-20*, at 317-321.

The Department correctly determined based on the extensive record on this issue that Verizon failed to support its proposed EF&I factor based on 1998 DCPR data. Despite AT&T's request for substantiation of Verizon's proposed factor and the Department's directive to provide such information, Verizon failed to provide any data by which the Department could analyze the specific relationship between individual switches and their associated investments, or analyze the reasonableness of the total installation costs assumed by Verizon. As the Department correctly determined, the failure of Verizon to disaggregate the DCPR data on a project basis made it impossible to evaluate "whether Verizon's proposed EF&I factor reasonably represents its forward-looking cost of installing switches."[31] For this reason, the Department correctly rejected use of the 1998 DCPR data to compute an appropriate and forward-looking EF&I factor.

As an alternative to this discredited EF&I estimate based on unsubstantiated 1998 data, Verizon again asks the Department to consider an EF&I number that Verizon proffered in its Virginia arbitration of installation costs purportedly associated with six new switches installed in 2000.[32] But the Department already has considered and expressly rejected this evidence.[33] Furthermore, as the Department found, installation cost information drawn from such an extremely limited sample size "is of limited value."[34]

Significantly, in its motion for reconsideration Verizon does not point to any evidence other than this conclusory assertion from Virginia that the Department already has found to be unpersuasive. As the Department noted, "Verizon had ample opportunity to meet is burden of

31 *D.T.E. 01-20*, at 317.
32 Verizon Motion for Reconsideration, at 7 (citing the response to VZ-VA 40, within RR-DTE 49).
33 *D.T.E. 01-20*, at 318.
34 *Id.*

proof" on this issue.[35] At this stage Verizon does nothing more than try to reargue the issue, but it cannot point to any reliable record evidence to support its position.

More generally, Verizon's claim that the Department should increase the EF&I factor to reflect new switch investments is not correct even conceptually. The Department based its decision regarding the switching EF&I factor on the best available information regarding the three components of that factor: vendor engineering and installation, ILEC engineering and installation, and sales tax.[36] Verizon failed to prove that any of these components will change as a result of the Department's findings regarding switch material prices. First, the 12 percent vendor component adopted by the Department resulted from AT&T's running of Verizon's SCIS model in two different modes, one with material only and the other in an EF&I mode.[37] Verizon did not challenge this 12 percent figure as calculated with SCIS, and presented no evidence to the contrary.[38] Second, the ILEC component of 12 percent adopted by the Department reflects the midpoint of the 1992 Bell Atlantic factors for engineering and labor costs,[39] and is an appropriate estimation of the EF&I work done by an ILEC. This ILEC factor, however, is derived from 1992 data which was based on older technology and older methods for engineering and installing a switch. As the cost of switching investments has come down, the cost of engineering and installing a switch also has decreased due to improvements in vendor-provided switch planning and engineering software programs which streamline switch engineering and installation. Thus, the Department approved 12 percent ILEC factor is appropriate, and indeed is

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35 *D.T.E. 01-20* at 317.

36 *D.T.E. 01-20* at 318.

37 *D.T.E. 01-20* at 319, citing Ex. ATT-20, Pitts Revised Rebuttal, at 40 & ex. CP-7; Tr. 11, at 2113-2114, 1/29/02 (Pitts).

38 *D.T.E. 01-20* at 319.

39 *D.T.E. 01-20*, at 320.

likely overstated.[40] While switch investment has decreased, engineering and installation costs also have been reduced. Finally, the five percent sales tax is by definition a constant percentage of switch material prices.

In sum, once again Verizon's motion for reconsideration merely restates arguments that the Department already has considered and rejected in reaching its decision regarding appropriate inputs.

### E. Busy Hour to Annual Conversion Factor: Verizon Has No Basis for Reconsideration of the Inputs Adopted by the Department.

#### 1. Number of Days: The Department Appropriately Spread Switching Costs Over 308 Days.

The Department found that in calculating the busy hour to annual conversion factor, Verizon improperly spread switching costs over usage for only 251 days a year, and that it should instead use the figure of 308 days in its calculation.[41] Verizon claims that the Department mistakenly used 308 days to calculate the busy hour to annual conversion factor. In fact, the Department's adoption of the 308 days is fully supported by record evidence and does not reflect a "misunderstanding" of the evidence, as Verizon erroneously contends.[42]

In its motion for reconsideration, Verizon continues to press the same argument Verizon first advanced on brief, namely that Verizon's proposal of 251 days to calculate the BH/AHD conversion factor does not reflect the spreading of switching costs "only over business days."[43] However, whether the 251 days represent business days, as Verizon originally stated,[44] or

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[40] As the Department noted, in 1999 the FCC found that ILEC's own switch installation costs were approximately eight percent of material prices, based on the most recently available data. The Department stated that it could have relied on this more recent determination, but that it gave Verizon the benefit of instead using the much higher figure of 12 percent for ILEC installation costs. *See D.T.E. 01-20* at 319-321.

[41] *D.T.E. 01-20* at 326-327.

[42] Verizon Motion for Reconsideration at 8.

[43] Verizon Motion for Reconsideration, at 9; *see also* Verizon Initial Brief, at 165.

[44] Ex. VZ-37, Verizon Recurring Cost Study, Workpaper Part C-3, Section (utilizing number of days in a year, number of Saturdays and Sundays, number of holidays, and number of average business days to calculate busy

(continued...)

represents a "bogey"[45], as Verizon for the first time argued on brief and presently argues, it is an incorrect number by which to calculate the BH/AHD conversion factor. The Department recognized in its Inputs Order that "traffic patterns have likely evolved since 1997,"[46] the last year in which Verizon conducted a study of traffic patterns. The Department correctly found that "Internet use continued to grow since 1997…and that growth in dial-up access is consistent with growth in DSL and cable modem access…."[47] In light of these facts, Verizon's proposed 251 days would allow Verizon to over-recover switching investment, and would disregard the fact that the public switched network is used every day of the year. The Department's decision to spread switching costs over 308 days reasonably accounts for the present use of UNE switching (for both voice and data) by business and residential customers on more than the 251 days of the year proposed by Verizon.

### 2. BH/AHD Factor: The Department's Adoption of a 7.0 Percent Busy Hour to All Hours of the Day Ratio Is Supported by the Testimony of Verizon's Own Witness.

Verizon also claims that the Department's adoption of a 7.0 percent busy-hour to all-hours-of-the-day ("BH/AHD") ratio "is pure speculation, not supported by any record evidence."[48] This assertion is untrue, and already has been rejected by the Department.

Verizon's own switch cost witness conceded that "Internet traffic has flattened out the busy hour."[49] Likewise, AT&T/WorldCom's switching expert testified that the fact that switches

(continued...)

hour to annual conversion factor); Tr. 2328-2330, 1/31/02 (Matt) ("To divide by 251 is even assuming that that traffic, peak traffic, is happening five days a week, 12 months a year, and it's not. So I'd submit that the difference between those three months and the average of all year, of those nine months, that difference cares for the weekend traffic and the holiday traffic, and we're equal. That's why it works. That's our opinion. That's why we've been using it.")

45 Verizon Reply Brief, at 83.

46 *D.T.E. 01-20*, at 327.

47 *D.T.E. 01-20*, at 327.

48 Verizon Motion for Reconsideration, at 11.

49 Tr. 2334-2335, 1/31/02 (Matt).

now have multiple busy hours, instead of just one, which means that the ratio of busy hour calls to total day calls is flattening as usage, including Internet usage, is spread more evenly throughout the day.[50] The Department correctly considered this testimony and concluded that Verizon's five-year old factor of 8.3 percent should decline as a result of the "increasing use of the Internet to spread traffic more evenly throughout the day."[51] Despite the numerous opportunities afforded Verizon to support its proposed factor, Verizon failed to substantiate its 8.3 percent factor with anything other than its outdated 1997 traffic study.[52] The Department's adoption of a 7.0 percent BH/AHD factor correctly accounts for the increased flattening of the busy hour since Verizon's last traffic study in 1997, and is properly based on record evidence.

Verizon claims in the alternative that even if the Department, the parties, and Verizon's own witness are correct in that Internet usage is flattening out the busy hour, "there is no basis for assuming that such a trend characterizes usage during the *busiest* business days of the year."[53] First, Verizon presented no record evidence that the flattening trend is limited solely to "non-busy" days of the year. Second, it is unreasonable to assume that only non-busy business and weekend days will experience the undisputed leveling of traffic while the "busiest business days of the year" will still reflect five-year old traffic patterns. Verizon's alternative assertion provides no basis for reconsideration.

Finally, Verizon seeks to bolster its proposed 251 days and 8.3 percent BH/AHD factor by arguing that the MOUs produced from a forward-looking conversion factor of 0.000227 (resulting from the Department adopted 308 days and 0.07 BH/AHD) are more than the total

[50] Ex. ATT-21, Pitts Surrebuttal, at 7-8; Tr. 2046-2047, 1/29/02 (Pitts).
[51] *D.T.E. 01-20*, at 327.
[52] Verizon Motion for Reconsideration, at 328.
[53] Verizon Motion for Reconsideration, at 11.

number of Dial Equipment Minutes ("DEMs") shown in Verizon's 2000 ARMIS Report.[54] Again, Verizon's argument is not based on any evidence in the record of this proceeding. In particular, there is no proof that the DEMs for 2000 have any relevance to the selection of a forward-looking conversion factor. In order to compare such a conversion factor to DEMs, the vintage of the SCIS inputs and the assumptions supporting the conversion factor used by Verizon to calculate total MOUs must match precisely the vintage of the inputs and assumptions used to compute the DEMs shown in the 2000 ARMIS Report. Because minutes of traffic are increasing rapidly over time, even a difference in the quarter of the year used to compute the total number of minutes would result in different MOUs versus ARMIS DEMs. There is no evidence whatsoever that Verizon used the same time frame for the inputs in its calculation of total MOUs as for the inputs to the ARMIS calculation of total DEMs. To the contrary, since the conversion factor adopted by the Department is to be used in setting forward-looking UNEs in a network in which Verizon has presumed usage will be increasing, there is no reason to expect that it would align with data from 2000 selected by Verizon. In any case, without testing by the Department and the parties, there is no reason to conclude that Verizon's unsupported and unexplained comparison in any way undercuts the Department's conversion factor.

### F. Intra-Switch Calls: The Department Correctly Rejected Verizon's Proposal to Apply Two Switching Charges to an Intra-Switch Call.

Verizon asserts that the Department, in disallowing Verizon to apply two switching charges for an intra-switch call, "inadvertently failed to consider and specifically address the fact that application of both an originating and terminating local switching charge to intra-switch calls is appropriate because these charges recover completely separate and distinct costs."[55] This

[54] Verizon Motion for Reconsideration, at 11.
[55] Verizon Motion for Reconsideration, at 15.

assertion is untrue. Verizon argued this very point in its reply brief,[56] and the Department expressly considered and rejected that argument in its Inputs Order.[57] The Department noted that it previously rejected Verizon's attempt to apply the charge for unbundled local switching twice for an intra-switch call, once for originating the call, and once for terminating the call.[58] Because "Verizon presented no new evidence in the current proceeding that intra-office and inter-office switching costs are different," the Department correctly concluded that "Verizon…failed to demonstrate why the Department should alter its previous finding[]."[59] It is, after all, Verizon's burden to demonstrate the reasonableness of its rates and Verizon's burden to demonstrate that the Department made a mistake in its decision on this issue. Verizon's re-assertion of the same arguments made in its brief, and already rejected by the Department, does not rise to the level of a legitimate issue for reconsideration.

Furthermore, Verizon's references to Vermont's Section 271 proceedings and a New Jersey ruling on intra-switch charges are not helpful to Verizon's motion for reconsideration.[60] The Department has made clear that it will not adopt costs based solely on the fact that another state (or any number of other states) made a similar finding.[61] The mere fact that Verizon's proposal to separate originating and terminating charges for intra-switch calls may not have prevented grant of Section 271 approval elsewhere does not negate Verizon's failure to meet its burden of proof in this proceeding.

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[56] *See* Verizon Reply Brief, at 89-90.

[57] *D.T.E. 01-20*, at 276 & 330.

[58] I*nvestigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to become effective on September 27, 1999, by New England Telephone Telegraph Company d/b/a Bell Atlantic-Massachusetts,* D.T.E. 98-57, Order at 219 (March 24, 2000) (citing Part B, Section 6.3.2.B of Tariff No. 17); *Phase I Order*, at 45-46.

[59] *D.T.E. 01-20*, at 330.

[60] *See* Verizon Motion for Reconsideration, at 15-16.

[61] *D.T.E. 01-20*, at 24.

In an attempt to present the same proposal already rejected by the Department and discussed above, Verizon recommends that if the Department rejects Verizon's proposal to apply two switching charges for an intra-switch call, the Department "should direct Verizon MA … to exclude terminating minutes for intra-switch calls."[62] No record evidence supports this new fallback position devised by Verizon. Verizon cites to nothing, nor can it, to support its contention that a "single-charge calculation for intra-switch calls…should not include both terminating and originating minutes of use."[63] Verizon is now asking the Department to allow Verizon to do indirectly what the Department already has determined that Verizon cannot do directly, namely institute one charge for intra-switch calls. The Department has carefully analyzed and rejected Verizon's position. Verizon's attempt to skirt the Department's decision should be rejected.

### G. Right to Use Fees: Verizon Does Nothing More than Reiterate RTU Arguments Considered and Properly Rejected by the Department.

Verizon claims that the Department "inadvertently" failed to increase the amount of Verizon's right-to-use fees ("RTU") based on the Department's assumption of 90 percent new switches.[64] The Department, however, examined and rejected Verizon's unsubstantiated argument that RTU costs should be increased by almost 2 million dollars per switch if the Department utilized new switch discounts to arrive at appropriate switch prices.

In its reply brief, Verizon specifically argued: "should the Department adjust the switch discount by any amount so as to include 'new' switches in greater proportion than is already included in Verizon MA's discount, an associated increase must be made through the RTU

62 Verizon Motion for Reconsideration, at 17.
63 Verizon Motion for Reconsideration, at 17.
64 Verizon Motion for Reconsideration, at 12.

costs."[65] In making this argument to the Department, Verizon relied upon the evidence it presented in the *Consolidated Arbitrations* that RTU fees for new switches amount to nearly $2 million per switch. Contrary to Verizon's claim that the Department "ignored" this evidence "without explanation,"[66] the Department specifically rejected this evidence, as follows:

> Verizon's estimate of the RTU cost is based on data provided in the Consolidated Arbitrations (Exh. VZ-38, at 77)…Verizon indicates that it "did not attempt to estimate the cost of the initial switch software packages," but instead relies on cost estimates from other proceedings. (Exh. VZ-38, at 77). Verizon has failed to substantiate its assertion that the assumption of 90 percent new switches requires any increase in RTU costs, and therefore its compliance filing shall not include any additional RTU costs.[67]

Thus, Verizon incorrectly states that the Department "fail[ed] to acknowledge the evidence derived from the *Consolidated Arbitrations*."[68] The Department specifically considered the evidence presented by Verizon in favor of its request for an increase in RTU costs and the Department made no mistake in concluding that Verizon failed to substantiate its claim that adoption of a model with 90 percent new switches requires a increase in RTU costs.

## II. IOF – VERIZON'S MOTION TO RECONSIDER OR CLARIFY THE DEPARTMENT'S ORDER TO UNBUNDLE THE COST OF DCS FUNCTIONALITY AT THE TERMINATING END FROM OTHER IOF COSTS IS WITHOUT MERIT.

Verizon seeks reconsideration, or in the alternative clarification, of the Department's order requiring Verizon to price IOF transport with and without Digital Cross-Connect Systems ("DCS") functionality at the termination end.[69] Verizon's request has no merit.

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65 Verizon Reply Brief, at 65-66.
66 Verizon Motion for Reconsideration, at 13.
67 *D.T.E. 01-20*, at 308.
68 Verizon Motion for Reconsideration, at 14.
69 Verizon Motion for Reconsideration, at 38.

### A. Verizon's Assertion That Not All DCS Costs Are Included in Its IOF Calculations Is Beside the Point.

Verizon argues that the Department was mistaken in believing that all of the cost of DCS associated with its Enterprise Network Reconfiguration Service had been included in the cost of IOF. Verizon argues that in fact only a portion of those DCS costs had been included.[70] The Department should not be distracted by this irrelevant argument. Even if true, this assertion would be beside the point. Verizon is still including in its IOF charge the cost of DCS equipment that CLECs will not use on the terminating end if they chose to perform the cross-connection functions provided by DCS equipment in some other way. Where dedicated facilities can be brought directly to a CLEC's collocation cage, no DCS functionality is required by Verizon to terminate IOF to the CLEC's facilities and, therefore, no DCS costs should be included.[71] As the Department found, "Verizon has failed to demonstrate why it cannot offer DCS as an option at the termination end of circuits."[72] In pricing IOF as an option without DCS at the terminating end, Verizon must exclude all DCS costs, as the Department has clearly ruled.

### B. Verizon's Claim That The Inclusion of Some DCS Costs Is Consistent With A Forward Looking Design Is Irrelevant To The Department's Decision.

Verizon appears to argue that including some DCS costs is consistent with a forward-looking network design. Verizon states that it included DCS costs which are associated with "automated interconnection capabilities that allow Verizon MA to eliminate traditional manual cross-connection that otherwise would be required."[73] Verizon argues that this DCS

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70 Verizon Motion for Reconsideration, at 39.

71 *See, e.g.*, Tr. 1527-1528, 1530, 1/24/02 (Turner); AT&T Initial Brief, at 202-203.

72 *D.T.E. 01-20*, at 364.

73 Verizon Reconsideration Motion, at 39.

functionality is "an efficient alternative to manual cross connection equipment and standalone multiplexers…."[74]

Verizon's argument is irrelevant for two reasons. First, its factual assertions relate primarily to the interconnection portion of the IOF cost study, not to the terminating end to which the Department's inputs order is directed. Second, Verizon is incorrect in asserting that the Department's decision constitutes a finding that DCS is not efficient. It does not. It simply allows CLECs to determine whether or not they wish to obtain DCS functionality on the terminating ends from Verizon when they purchase IOF. The Department stated:

> TELRIC-based UNE prices should encourage efficient investment and practices by Verizon and CLECs. Allowing CLECs to determine whether they require DCS at the termination end of IOF circuits furthers this goal.[75]

Moreover, the Department's decision allows Verizon to charge for and recover from CLECs the forward-looking cost of the DCS functionality when the CLECs order it and use it.[76]

In sum, Verizon's argument that use of DCS is a more efficient way for it to manage its own network is not relevant to the grounds of the Department's decision.

### C. Verizon's Unsupported Assertion That It Cannot Implement a DS1 Transport Option That Excludes DCS Is Contradicted by the Record.

Verizon argues that it cannot implement the "two DS1 transport options (*i.e.*, one with DCS at the terminating ends and one without)" because "there is no way for Verizon MA to provide DS1 transport without using the DCS, because Verizon MA does not install redundant multiplexers and manual cross connection systems in addition to the wideband DCS systems."[77] Verizon, however, cites to no evidence in support of this conclusory assertion.

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[74] Verizon Reconsideration Motion, at 40. *See also*, *id*. at 39 ("Each circuit design reflects the most efficient, forward-looking way to serve different levels of transport demand and transport demand characteristics at a central office.").

[75] *D.T.E. 01-20*, at 364.

[76] *D.T.E. 01-20*, at 364.

[77] Verizon Motion for Reconsideration, at 40.

In fact, the evidence is inconsistent with Verizon's assertion. Not only did the AT&T/WorldCom witness explain Verizon's ability to provide IOF without DCS capability,[78] Verizon itself stated in pre-filed testimony that DCS is not required for Verizon to terminate interoffice transport facilities.[79] Finally, Verizon's own cost study, and the diagrams contained in it, show that Verizon does not use DCS in all instances.[80] For example, compare the two DCS machines in the "high complexity" IOF arrangement to the one DCS machine in the "medium complexity" IOF arrangement in Verizon's cost study.[81] The "medium complexity" arrangement differs from the "high complexity" arrangement by the simple removal of one DCS piece of equipment. Similarly, the "low complexity" arrangement does not use DCS at all; rather it uses add-drop multiplexers.[82]

Given Verizon's own testimony and the variety of options that Verizon's cost study assumes, which include IOF both with and without DCS, the Department should reject Verizon's unsupported assertion that it could not possibly offer IOF without DCS.

Indeed, Verizon's related request for clarification is further confirmation that Verizon can and does offer IOF without DCS. On page 40 of its motion, Verizon asks the Department to clarify "that the Department did not intend to require Verizon MA to provide unbundled DCS as a standalone UNE…."[83] After arguing that it cannot provide IOF without also providing DCS, Verizon expresses concern that the Department's order might require it to "offer DCS as an option (either on a stand-alone basis or with unbundled transport) everywhere within Verizon

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78 Tr. 1528-1529, 1/24/02 (Turner).

79 Ex. VZ-38A, Verizon Recurring Cost Panel Surrebuttal, at 91.

80 Ex. ATT-16, Turner Rebuttal, at 13.

81 *See* Ex. VZ-37 (Part D-6 IOF Transport, MA01-20 IOF Invest.xls Workbook, DS1 Worksheet, Rows 4-11 for High Complexity and Rows 19-26 for Medium Complexity) (located on page 31 of the hardcopy of the DS1 worksheet that Verizon served on AT&T in May, 2001).

82 *See* Ex. VZ-37 (Part D-6 IOF Transport, MA01-20 IOF Invest.xls Workbook, DS1 Worksheet, Rows 34-41 for Low Complexity) (located on page 32 of the hardcopy of the DS1 worksheet that Verizon served on AT&T in May, 2001).

MA's network, *regardless of whether Verizon MA has installed a DCS at a particular location*."[84] Verizon cannot have it both ways. If Verizon now argues that it may not have DCS in all locations, it cannot claim that its offer of IOF in all locations necessarily includes DCS.

### D. Verizon's Request for Clarification Should be Denied, Because the Department's Order is Clear That It Requires Verizon to Unbundle the Pricing of DCS from the Pricing of IOF.

Verizon's motion for clarification regarding IOF and DCS confuses a requirement to unbundle the pricing of IOF and DCS at the terminating end with a requirement to provide DCS on a stand-alone basis. Although the Department's order may not have required DCS to be provided on a stand-alone basis, it definitely required Verizon to separate the cost of DCS from the cost of IOF and permit CLECs to order IOF unbundled from DCS. The thrust of the Department's order is that IOF does not necessarily include DCS costs and that DCS costs must be calculated and charged separately in situations where IOF is ordered, depending upon whether the DCS functionality is ordered and provided. This does not mean that Verizon must provide DCS on a stand-alone basis, but it does mean that Verizon must unbundle the pricing of DCS from the pricing of IOF.[85]

## III. COLLOCATION – DC POWER DISTRIBUTION: VERIZON'S EFFORT TO RELITIGATE THE AVERAGE COLLOCATION POWER CABLE DISTANCE IS WITHOUT MERIT.

Verizon has asked the Department to reconsider its ruling that the average forward-looking cable length between a Battery Distribution Fuse Bay ("BDFB") and a collocation arrangement in the metro zone is 60.5 feet. The ground for Verizon's motion is its claim that the

(continued...)

83 Verizon Motion for Reconsideration, at 40.

84 *Id*. at 41 (emphasis supplied).

85 *See, e.g.*, Ex. ATT-13, Turner Rebuttal, at 13, where Mr. Turner explains how he simply removed the costs related to DCS at the termination end from the price of IOF and provided for such costs to be separately identified for pricing purposes, depending upon whether the DCS functionality is ordered.

Department purportedly misinterpreted a survey that Verizon conducted of its current network.[86] In fact, however, the Department noted that "although Verizon's original data showed an average one-way distribution cable length of 121 feet, in supplemental testimony and at hearings Verizon testified that the average one-way distribution length is 60.5 feet, *and that an average one-way cable distance of 60.5 feet for its metro COs is **'quite reasonable'**.*"[87] In sum, the Department relied on Verizon's repeated admission that 60.5 feet is reasonable for average one-way cable distance as evidence in support of its finding of 60.5 feet.[88] The Department quite properly relied on the sworn testimony of Verizon's own witness as to the reasonable length of distribution cable in a forward-looking network, made not only on cross-examination but also in her pre-filed surrebuttal testimony, after ample time for internal review. Without any basis whatsoever, Verizon now tries to disavow its own sworn testimony by asserting that it contained "misstatements."[89] That is not a proper basis for a motion for reconsideration. Verizon's reiterated testimony was clear, and it is bound by its admissions on this issue. In sum, the Department should deny Verizon's motion for reconsideration as to cable length.

## IV. NONRECURRING COSTS: VERIZON'S ATTEMPTS TO RELITIGATE SEVERAL OF THE DEPARTMENT'S NRC FINDINGS SHOULD BE REJECTED.

Verizon's motion for reconsideration urges the Department to revisit two nonrecurring cost issues: (i) the application of the Department's decision disallowing field dispatch charges; and (ii) the Department's decision to adjust Verizon's task time survey results because of the inadequacies in the survey. Neither of these clear, well-reasoned decisions merits reconsideration.

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86 Verizon Motion for Reconsideration, at 34.

87 *D.T.E. 1-20*, at 425-426, quoting Exh. VZ-29, at 43 (Clark Direct), and also citing Tr. 6, at 1049-1050 (cross-examination of Clark).

88 *Id*. at 426.

89 Verizon Motion for Reconsideration, at 35.

### A. Classification of NRCs: No Clarification Is Warranted Regarding the Department's Order to Include Field Dispatch Charges Within Verizon's Recurring ACF.

Verizon has failed to establish that any clarification of the Department's Order concerning the recovery of field dispatch charges is necessary.[90] Indeed, Verizon's own motion sets forth the standard for clarification, a standard it comes woefully short of meeting in this instance:

> Clarification of previously issued order may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is sufficiently ambiguous as to leave doubt as to its meaning.[91]

The Department's Order concerning the treatment of field dispatch charges is neither silent nor ambiguous. The Department made clear that field dispatch charges – *any* field dispatch charges – associated with a CLECs' order of UNEs should be recovered in the recurring rate.[92] The Department has made no distinction regarding the reason for a field dispatch. Verizon should not be allowed to introduce one now. Significantly, Verizon's new assertion regarding field dispatches to place identification tags at a NID at the request of a CLEC is not based on any record evidence, but instead is an attempt to dream up a new NRC that appears nowhere in Verizon's NRCM. More generally, Verizon's argument is an invitation to travel down an unproductive and dangerous path, whereby Verizon invents exceptions to the Department's rule, requiring future rounds of litigation and uncertainty.

Not only would such a process be costly and inefficient, but it would result in double recovery for Verizon. The Department already has ordered Verizon to adjust its Annual Cost Factor ("ACF") to recover the costs for all field dispatches, including those unnecessary for

[90] Verizon Motion for Reconsideration, at 42-43.

[91] Verizon Motion for Reconsideration, at 4 (citing to *Boston Edison Company*, D.P.U. 92-1A-B at 4 (1993); *Whitinsville Water Company*, D.P.U. 89-67-A at 1-2 (1989).

service, within the recurring rate.[93] To allow Verizon a nonrecurring charge on any category of dispatches would therefore result in CLECs being charged twice for the service – in both the recurring and nonrecurring rate structure. The Department should keep its clear rule intact. Field dispatch charges should be recovered through the ACF in Verizon's recurring rates.

### B. Task Time Methodology: Verizon Presents No Valid Basis for Reconsidering the Department's Order Regarding Nonrecurring Task Times.

The Department found that the work time estimates upon which Verizon based its NRC estimates suffered from two significant flaws. First, they were upwardly biased because the respondents knew that the results would be used to compute costs that Verizon would try to charge to its competitors.[94] Second, separate and apart from this issue of conscious or subconscious bias, Verizon was also unable to prove that it had obtained a random, representative sample of respondents.[95] The Department therefore ordered Verizon "to compute a 95 percent confidence interval around each of the task times," and to use the low end of that confidence interval for the task times that it uses as inputs to its non-recurring cost model ("NRCM").[96] Verizon challenges the Department's findings, and in the alternative argues for use of a 90 percent confidence interval rather than a 95 percent confidence interval.

Verizon's plea for reconsideration on this issue ignores the Department's finding regarding bias in Verizon's work time surveys. Verizon incorrectly asserts that the sole basis for the Department's finding was its conclusion that Verizon's survey was not based on a statistically valid sample.[97] Indeed, Verizon goes so far as to assert that the adjustment ordered

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92 *D.T.E. 01-20*, at 452.
93 *D.T.E. 01-20*, at 453.
94 *D.T.E. 01-20*, at 462.
95 *Id.* at 465-469.
96 *Id.* at 470.
97 Verizon Motion for Reconsideration, at 31-34.

by the Department "accounts only for the possibility that Verizon MA's sample included a disproportionate number of high times, and not for the equally likely possibility that it contained a disproportionate number of low work times."[98] But this assertion of mistake or oversight ignores the Department's express findings. The Department expressly found that "the survey is more likely to result in over-estimates of task times," because the respondents were informed that the results would be used to compute costs that Verizon will charge to its competitors.[99] Furthermore, the Department noted that the likelihood of bias was exacerbated by Verizon's failure to subject its survey process to any kind of independent oversight.[100] The Department's decision to use the "low end of the 95 percent confidence interval" for each of these task times is meant to deal with these defects within the Verizon study, in addition to the problems regarding Verizon's sampling methodology.[101]

Considering the Department's finding that many of times used within the NRCM are inflated as a result of this bias, use of the low end of the 95 percent confidence interval, a time below the mean time reported, is a well-reasoned approach. Such an approach will counteract the inflationary effect of Verizon's overstated task times, and result in NRCs that come closer to achieving a true TELRIC cost. Verizon's brand-new proposal to use a "trimmed mean" approach – presented for the first time on reconsideration – will not appropriately address the bias within Verizon's survey results.[102] While Verizon contends that such an approach "generally results in lower work times", it fails to recognize that such an approach could also result in higher times. This would occur when trimming the mean resulted in eliminating a number of lower, and probably more accurate, time entries that reduce the mean significantly.

98 Verizon Motion for Reconsideration, at 32.
99 *D.T.E. 01-20*, at 462.
100 *D.T.E. 01-20*, at 463.
101 *D.T.E. 01-20*, at 464.

Clearly, this would be at complete odds with the Department's findings concerning upward bias. The Department's use of the low end of the 95 percent confidence interval remains a reasonable and well-supported decision, particularly in light of these bias findings.

The Department's remedy will also address Verizon's additional failure to substantiate its sampling methodology. Specifically, the Department found that Verizon was unable to uphold its burden to establish that its survey responses were obtained from a "random, representative sample."[103] Verizon's use of the average work time in its study, therefore, was not based upon a statistically valid population of task times.

Finally, there is no basis for Verizon's alternative proposal that its work times be adjusted based on a much more lenient 90 percent confidence interval, rather than the 95 percent confidence interval ordered by the Department. Use of a 95 percent confidence interval is a statistically sound and widely accepted method of addressing such concerns over the precision of statistical data.[104] Verizon witness Bruce Meacham testified at the evidentiary hearings that Verizon had applied confidence intervals to task time data in other state proceedings.[105] Indeed, Verizon itself applied a 95 percent confidence interval to the nonrecurring costs it proposed in this proceeding (as distinguished from the underlying work time assumptions).[106] Because Verizon is on record supporting the appropriateness of the use of the 95 percent confidence

(continued...)

[102] *See* Verizon Motion for Reconsideration, at 33.

[103] *D.T.E. 01-20*, at 469.

[104] Dr. Joseph Tal, a former professor of statistics at Northwestern University notes that the typical confidence interval used in scientific publications is 95 percent. *See* Dr. Joseph Tal, *Reading Between the Numbers: Statistical Thinking in Everyday Life,* at 226 (2001); *see also* Jay Devore and Roxy Peck, *Introductory Statistics*, at 286 (2d ed.) (1994) (noting that "[m]any investigators think that a 95% [confidence] interval give a reasonable compromise between reliability and precision.").

[105] Tr. 572, 01/17/02 (Meacham).

[106] Tr. 4, at 627, 630, 01/17/02 (Goldrick); RR-DTE 14, Attachment 1 (confirming Verizon's use of a 95 percent confidence interval to measure precision of NRCs); *see also D.T.E. 01-20* AT 460-461.

interval to test for sample validity, its after-the-fact effort in this motion to apply a much more lenient 90 percent confidence interval should be rejected.

Now is not the time for Verizon to be offering creative twists on statistical theory. Verizon failed to meet its burden of proving the reliability of its task time data. The Department has made a clear, reasoned decision that addresses the specific flaws within Verizon's task time study, and that decision should stand.

## V. OPERATIONS SUPPORT SYSTEMS ISSUES.

### A. General OSS Costs.

#### 1. The Department Properly Rejected Verizon's Historical Computer Hardware Costs.

The Department ruled that Verizon had failed to meet its burden of proving the nature and extent of any forward-looking costs associated with computer hardware for operations support systems ("OSSs"), and for that reason rejected those proposed costs.[107] Verizon asks the Department to reconsider this finding, but it does not present any proper basis for doing so.

First, Verizon asserts that its OSS cost study actually is forward-looking with respect to computer hardware costs, because Verizon "used a[s] a proxy for these forward-looking costs its expenditures from the past several years, with adjustments."[108] But this assertion cannot be squared with Verizon's own evidence. In fact, Verizon sought recovery only for its historical costs, and emphatically insisted that it did not and should not make any adjustment to them to make them forward-looking.[109] Verizon then attempted to justify this backward-looking pricing on the ground that the gateway systems at issue here were all in place by the end of 1999.[110]

[107] *D.T.E. 01-20*, at 510.
[108] Verizon Motion for Reconsideration, at 37.
[109] Ex. VZ-26, Minion Direct Testimony, at 6, and Workpaper 4, page 2, note 1.
[110] Tr. 930-931, 1/18/02 (Minion).

Indeed, in its Initial and Reply Briefs, Verizon attempted to ridicule the very notion that its OSS cost study should have been based on estimated future costs for OSS-related hardware.[111]

Second, Verizon also makes the conclusory and wholly unsupported assertion that the Department relied "on a mistaken interpretation of the Act and FCC regulations."[112] There is no basis for this claim. The Department has correctly found that "[t]he pricing of UNEs, per the TELRIC method, is not an exercise in cost recovery," and that therefore Verizon failed to meet its burden of proof with respect to OSS computer hardware costs because it presented purely historical costs without any evidence that they would have any relation whatsoever to forward-looking costs.[113]

### 2. The Department Properly Applied Its Prior Order That General OSS Costs Must Be Allocated Across All Access Lines.

The Department reiterated its 1999 order that Verizon must allocate its allowed OSS costs across the total number of access lines.[114] It explained that "the Department previously determined that Verizon benefits from improvements to OSS through improved operating efficiency," and previously "ordered allocation of costs based on the total number of access lines," and found that Verizon had failed to prove that these previous findings and order were in error.[115] Verizon argues that "[t]here is absolutely no evidence in the record to suggest that Verizon MA, or its end users, benefit from these OSS[s]."[116] But what is at issue here are the express and unchallenged findings made by the Department in 1999 and – as the Department has explained – those findings were based on ample and clear evidence.[117]

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[111] Verizon Initial Brief at 134-135; Verizon Reply Brief, at 160-161.
[112] Verizon Motion for Reconsideration, at 37.
[113] *D.T.E. 01-20*, at 510, quoting *Consolidated Arbitrations* docket, Phase 4-L Order at 46.
[114] *D.T.E. 01-20*, at 511.
[115] *Id*.
[116] Verizon Motion for Reconsideration, at 37.
[117] *See Consolidated Arbitrations* docket, Phase 4-L Order at 52-57.

Verizon also asserts that its witness purportedly "explained [that] Verizon does not benefit from these systems, even to winback customers; indeed, Verizon MA would discontinue support for them if it were not required to provide access to the CLECs."[118] This statement misrepresents the evidence. The first part of this assertion appears nowhere in Mr. Minion's testimony. He says nothing about the role of Verizon's improved OSS in the winback of customers. The second part of this assertion – after the word "indeed" – does appear in Mr. Minion's testimony. But that assertion was expressly considered and properly found to be "insufficient" by the Department.[119] The statement relied upon by Verizon, and previously found wanting by the Department, merely confirms that Verizon would prefer to be able to deny CLECs access to any portion of Verizon's network. In a world in which Verizon retains a legal obligation to make UNEs available to CLECs, all retail customers share the benefits of competition whether they continue to get service from Verizon or choose to sign up with a CLEC, and Verizon benefits from being able efficiently to transfer customers either to or from a CLEC. Verizon's motion for reconsideration goes no further than rearguing a point that the Department already has considered and rejected.

### B. Verizon's Proposed Daily Usage File ("DUF") Charges Were Properly Rejected.

The Department denied Verizon's proposed DUF charge for two, independent reasons: (i) "[b]ecause Verizon has not met its burden of proof to provide evidence of the reasonableness of the DUF charge;" and (ii) "because [Verizon] failed to demonstrate the absence of double recovery."[120] To succeed on its motion for reconsideration Verizon must therefore demonstrate

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118 Verizon Motion for Reconsideration, at 37, citing Ex. Vz-26 at 14 (Minion Direct).
119 *D.T.E. 01-20*, AT 511.
120 *D.T.E. 01-20*, at 517.

that ***both*** of these findings were the result of a mistake or inadvertence, or are in error in light of previously unknown facts.

Verizon's motion for reconsideration ignores the first of these two independent findings, however. For this reason alone its request for a different outcome with respect to DUF must be rejected. In its order, the Department specifically noted that AT&T had argued in the alternative "that, even if Verizon has not double counted costs included in the DUF charge, the charge should still be eliminated or greatly reduced because … Verizon has provided no substantive explanation or record evidence to meet its burden of proof that DUF charges are TELRIC-complaint."[121] The Department went on expressly to "agree with AT&T that Verizon has not demonstrated the reasonableness of the DUF charge through its cost study or testimony."[122] Verizon does not challenge or in any way question this finding in its motion for reconsideration. This alone is fatal to its arguments on reconsideration regarding its proposed DUF charge.

Verizon focuses solely on the Department's finding that Verizon failed to demonstrate the absence of double recovery. Specifically, Verizon accuses the Department of "ignor[ing]" evidence purportedly showing that Verizon "completely removed in this proceeding DUF costs from the Other Support Factor calculation and the Common Overhead ACF."[123] This accusation is false. The Department specifically addressed the evidence cited by Verizon, and properly concluded that it failed to meet Verizon's burden of proof.[124] Verizon is now merely rearguing points that the Department has already considered and decided. Its arguments are not proper grounds for a motion for reconsideration.

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121 *D.T.E. 01-20* at 514-515.
122 *Id.* at 516.
123 *See* Verizon Motion for Reconsideration, at 35.
124 *D.T.E. 01-20,* at 516-517.

Verizon also asserts that the Department's findings that Verizon did not meet its burden of proof should not have led the Department to reject the proposed DUF charge, but instead should have resulted in Verizon being permitted to try again by submitting additional evidence.[125] There is no basis for this assertion. Verizon failed to prove that its proposed DUF charge was justified. It does not now have the right to try put on a revised case with respect to DUF.

## Conclusion.

For the reasons stated above, AT&T respectfully urges the Department to deny Verizon's motion for reconsideration and clarification.

Respectfully submitted,

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[125] *See* Verizon Motion for Reconsideration, at 35 fn. 33, 36 & fn. 34.